

(2011) 07 JH CK 0238
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5328 of 2010

Nandu Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 4 JCR 16

Hon'ble Judges : Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Tatia., Acj

1. Heard learned counsel for the parties.
2. The petitioner is aggrieved against the wrong recording of his date of birth in service record and consequential his superannuation from 31.1.2010.
3. The petitioner's contention is that in his school certificate, wrong date of birth was mentioned as 27th January, 1950 and when he got the certificate containing wrong date of birth in the year 1966, he immediately approached the concerned Board for correction in his date of birth. However, he waited for sixteen years and ultimately the Board corrected his date of birth on 6th February, 1982. In the meanwhile the petitioner appeared in the competitive examination for selection in the State Police Administrative Service in the year 1983 and selected in said competitive examination and was given appointment on the post of Deputy Superintendent of Police and he joined the service on 15.1.1976. Therefore, it is clear that petitioner got correction in his date of birth in the school certificate after about more than six years from his joining in service, that too in the Police Department and furthermore, on the post of Deputy Superintendent of Police. The petitioner's contention is that immediately after correction in his date of birth made by the Board on 6th February, 1982, within no time on 18th February,

1982 he applied to the department for correction in his date of birth in service record. The petitioner's further contention is that the petitioner's matter for correction of his date of birth remained pending before the State Government and ultimately in the year 2009 he moved an application under the Right to Information Act and obtained the copies of the documents of the department dealing his case for correction in date of birth and then he came to know that in fact, at various levels his case was recommended for correction in date of birth and further (sic) to know in the year 2009 that he was proposed to retire on the basis of wrong date of birth dated 27th January, 1950, then he approached this Court by filing W.P(S) No. 5987 of 2009 which was decided by this Court vide order dated 22.12.2009 and petitioner was directed to submit a fresh representation to the Principal Secretary with the direction that the Principal Secretary shall consider the case of the petitioner and shall pass appropriate reasoned order within a period of four weeks from the date of submission of representation. The petitioner's representation was rejected by the Principal Secretary on 13th January, 2010.

4. The petitioner thereafter approached Central Administrative Tribunal, Patna Bench by moving O.A. No. 06 of 2010 which was dismissed by the Tribunal after observing that if the date of birth given by the petitioner i.e. 17th January, 1953 is accepted then the petitioner would not have been eligible for appearing in the competitive examination for State Police Service as he would not have been of the required age of 20 years and further after considering the facts in detail, by detailed order dated 13.8.2010 the Tribunal rejected the petitioner's O.A and hence this writ petition has been preferred by the writ petitioner.

5. We are in full agreement with the reasons given in the order passed by the Tribunal as well as we may mention the facts in brief again which clearly demonstrate that the claim is not bona fide and it was a stale claim sought to be injected with life by ingenuity only and the very foundational facts were very doubtful.

6. We may recapitulate the facts that, the petitioner's school first certificate contains his date of birth as 27th January, 1950. If the petitioner's date of birth was 17th January, 1953, he would have been of the age of 13 years only (whereas minimum age for secondary was 14 years of age), when he passed the Secondary Examination in the year 1966. It has been contended that when he came to know about such alleged mistake in his school certificate in the year 1966 itself and, he immediately moved the Board for correction in his date of birth in service record. However, admittedly the petitioner used the said certificate for his further studies in all the classes, may be in the school and thereafter, for obtaining the degree from the University on the basis of the said certificate. It is not even the case of the petitioner that he informed all the authorities that his date of birth given in the school certificate is not correct and is pursuing his remedy with the Board.

7. Be that as it may be, the petitioner, but for the certificate containing his date

of birth as 27th January, 1950, would not have been eligible to compete in the competitive examination for selection in the State Police Service and he used the certificate consciously, knowingly and purposefully, containing his said date of birth as otherwise he would have been disqualified from appearing in the competitive examination and then from joining the service in Police Department on the post of Deputy Superintendent of Police on 5.1.1976. Therefore, the petitioner's silence for about sixteen years of not getting the correction in the date of birth from the Board is significant and, cannot be believed. Further it cannot be believed without further proof that in fact the petitioner's date of birth recorded in the school certificate was wrong and also it is difficult to believe that the petitioner applied for correction in date of birth in the year 1966 and that matter remained pending and if remained pending, the petitioner himself did not approach any Court of law for getting declaration of date of birth and sought relief of correction in his date of birth in school certificate. After serving for about six years in the police service and holding high post, the petitioner could get another certificate containing different date of birth i.e., 17th January, 1953. According to the petitioner, he in the year 1966 itself submitted application to his employer but even when the employer did not correct the date of birth in almost 26 years, he did not approach any Court of law to seek any declaration and direction for correction in the date of birth in his service record. And if we believe the petitioner's contention that he could know about the office notes only when he got the copies of the note-sheet under the Right to Information Act then this clearly indicates that petitioner even had no knowledge that his case was pending before the authorities; therefore, this plea is not available to the petitioner that he did not approach the Court under any bona fide belief that the department itself may correct his date of birth. Therefore, the petitioner's claim was a stale claim even before the Education Board and he, to take benefit of certain office note-sheet which, according to the petitioner, dealt with the petitioner's application up to the year 1996 cannot make the claim of petitioner a live claim in the year even in 1996.

8. Then the petitioner approached this Court in first round by moving an application under Article 226 of the Constitution of India, wherein only it has been ordered that his representation be considered. This is nothing but a known way of creating cause of action in the dead and stale claim. The petitioner cannot get the benefit of the rejection of the petitioner's representation on 13th January, 2010 so as to show that his case continues and survives in spite of the fact that in twenty six years he got his date of birth corrected and that too after taking benefit of the said certificate by joining the service in Police Department and thereafter, he did not pursue his case for correction of his date of birth for such a long period in his own department.

9. Learned counsel for the petitioner relied upon the judgment delivered (sic) the case of *Mank Chand Vaidya v. State of Himachal Pradesh and others*, reported in 1976 LAB. I.C. 1233, wherein it has been held that an employee till he continues in service has a right to pursue his case for correction in the date of birth and the

Rules are not statutory Rules and it is the right of the employee to remain in service till he in fact attains the age of superannuation and any claim cannot be rejected on the ground of it being barred by time, at least till he attains the age of superannuation according to his actual date of birth. With respect, we cannot subserve to the above view. We are of the considered opinion that such a plea cannot be raised in every case where the facts clearly demonstrate that there is a serious doubt of bona fide in the claim of the applicant-employee.

10. Learned counsel for the petitioner also relied on the judgment of the Patna High Court delivered in the case of Siyaram Singh v. State of Bihar & Ors. reported in 1995 (1) PLJR 691. wherein also almost similar view was taken and in that case the question of date of birth was raised after retirement of the employee. However, we are of the considered view that the facts of that case is not similar with that of the case in hand.

11. Learned counsel for the petitioner then relied upon a Division Bench judgment of this Court delivered in L.P.A No. 660 of 2005 in the case of Sujit Kumar Sah v. State of Jharkhand & Ors., decided vide order dated 4th May, 2006. The controversy in the said case was entirely different. In that case, the employee applied for selection in the Police Department of the State and was duly selected and was given appointment. However, subsequently it was found that his date of birth, which he disclosed, indicated that he was below the eligibility age and, therefore, departmental enquiry was conducted and he was dismissed from service. The Division Bench of this Court observed that looking to the total less period in getting the eligibility age and there was provision of relaxation of age and further was of the view that the petitioner himself has not committed any fraud, nor he mis-represented about his date of birth as he already disclosed correct date of birth before his selection. In that situation, the order of dismissal was set aside by the Division Bench of this Court. The facts of the said case cannot be applied in a case where the petitioner himself has submitted a certificate of his date of birth which only made him eligible to take part in the competitive examination as well as to obtain appointment and it is a clear case of misrepresentation by the petitioner, if his date of birth recorded in the service was wrong.

12. Be that as it may. the petitioner would not have been even eligible to take examination of the Secondary at the age of 13 years, if the new projected date of birth is accepted and further would not have been eligible to the appointment as we have already observed.

13. In these facts and circumstances, it is clear that the petitioner, after taking full benefit of the certificate, could get another certificate after joining the police department and while holding the post of Deputy Superintendent of Police in the State itself obtained another certificate, therefore, we have no reason to believe that the certificate in any manner proves the actual date of birth of the petitioner and it is not mandatory to accept subsequently created documentary single evidence so as to hold that it was the document which contains the petitioner's

real and actual date of birth. At this juncture, we may observe that in such a disputed question of fact, the appropriate remedy was by filing a suit in time where his date of birth could have been determined which could have been adjudicated and how the employer is deprived of contesting the question of fact and as we can notice from the orders passed in this case that the employer had no option but to believe that the petitioner might have submitted his certificate for correction of his date of birth in the year 1966 on the basis of correct facts and further the matter remained pending before the Board for more than 16 years itself, is doubtful.

14. In view of the above reasons, we are of the considered opinion that the petitioner has abused the process of Court and, therefore, the writ petition is dismissed with cost of Rs. 10,000/- (Ten thousand only).